STATE OF MICHIGAN

IN THE SUPREME COURT

(On Appeal from the Michigan Court of Appeals and the Circuit Court for the County of Oakland)

BRIAN J. PERRY,

Plaintiff-Appellee,

vs.

GOLLING CHRYSLER PLYMOUTH JEEP, INC., a Michigan corporation,

Defendant-Appellant.

Supreme Court No. 129943
COA No.: 254121
L.C. No: 03-053489-NI

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AMICUS CURIAE BRIEF OF THE DETROIT AUTO DEALERS ASSOCIATION

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STATEMENT OF ORDER APPEALED FROM

The Detroit Auto Dealers Association (hereinafter "DADA"), amicus curiae in this matter, support the position of Defendant, Golling Chrysler Plymouth Jeep, Inc. with respect to its alleged liability under the Michigan Motor Vehicle Owner Liability Statute, MCL 257.401. DADA submits to this Honorable Court that the Michigan Court of Appeals decision in this matter dated October 11, 2005 should be reversed in conformity with existing rules of statutory construction. Further, DADA submits that the Court of Appeals in its decision below relied solely upon dicta in the Goins v Greenfield Jeep Eagle, 447 Mich 1; 534 NW2d 467 (1995) in reaching the conclusion that Golling was an owner of the motor vehicle at the time of the accident.

In its opinion, the Court of Appeals held that "execution" of the application for title was not complete and that vehicle ownership did not transfer until the application for title was both signed and mailed to the Secretary of State. Remarkably, the Court of Appeals also held that the facts were undisputed that the Plaintiff and Defendant executed (signed) the application for title on October 19, 2000. This was one day prior to the date of the accident which is the subject matter of the underlying litigation.

This Court is presented with a critical review of its opinion in the Goins v Greenfield Jeep Eagle Id. case issued in 1995. The Goins Court unnecessarily and perhaps inadvertently made the statement that the application for title was executed when the Defendant sent the necessary forms to the Secretary of State after they were signed by the customer and the Defendant. This is simply not the case and flies directly in the face of the clear language of the Owner's Liability Statute and the Michigan Motor Vehicle Code. Unfortunately, the Court of Appeals has accepted the statement of dicta set forth in the Goins case which goes far beyond the

scope of the issue presented and the Court's holding. Accordingly, amicus curiae, DADA, requests that this Court review this case and reverse the Court of Appeals since its opinion relies solely on dicta and an unnecessary statement by this Court in its prior opinion in Goins.

STATEMENT OF ISSUES PRESENTED

1. Was Defendant Golling Chrysler Plymouth Jeep, Inc. relieved of further owner's liability when the customer, Ksenia Nichols signed the Michigan application for title and took delivery of the motor vehicle?

Amicus curiae answers "yes".

Michigan Court of Appeals answered "no".

The trial court answered "yes".

STATEMENT OF FACTS

The accident which is the subject of the underlying litigation occurred on October 20, 2000. The Application for Michigan Title Statement of Vehicle Sale document was executed on October 19, 2000. At the same time, a retail installment sale contract was completed on October 19, 2000 and lists as buyer, Ksenia Nichols. These facts are undisputed. Ms. Nichols took delivery of the vehicle on October 20, 2000. Later that day, the accident took place. There is no evidence on the record to the knowledge of DADA that Defendant Golling Chrysler Plymouth Jeep ever maintained possession, control or dominion over the vehicle after delivery on October 20, 2000 and prior to the time of the accident associated with this litigation.

I. ARGUMENT

A. TITLE TO THE MOTOR VEHICLE IN QUESTION TRANSFERRED TO KSENIA NICHOLS UPON THE EXECUTION OF THE APPLICATION FOR TITLE BY BOTH THE DEFENDANT GOLLING CHRYSLER PLYMOUTH JEEP AND MS. NICHOLS, THE EXECUTION BY MS. NICHOLS OF A RETAIL INSTALLMENT SALE CONTRACT AND THE DELIVERY TO MS. NICHOLS OF THE MOTOR VEHICLE IN QUESTION.

Most automobile dealers in the State of Michigan transmit title work and applications for title via messenger to the Secretary of State. Rarely do auto dealers mail anything to the Secretary of State. This is due primarily to the volume of vehicles sold by dealers in Michigan. Many dealers send a messenger to the Secretary of State on a daily basis. That way, transactions that have been processed previously for the dealer such as registration documents and license plates are picked up by the messenger when new transactions are dropped off. Smaller, low volume dealers may only go to the Secretary of State office once a week or once every ten days. In Goins v Greenfield Jeep Eagle, 447 Mich 1 (1995) the Court, in dicta, stated that execution of the Application for Title also required not only signing the Application for Title, but also mailing of same to the Secretary of State in order to transfer title. If this Court accepts the ruling of the Court of Appeals in the instant litigation, it would place a completely unintended liability on motor vehicle dealers as the owner of the vehicle after the Application for Title or Certificate of Title is signed by the consumer and the vehicle is delivered. For example, based on the dicta in Goins, if a dealer sells a vehicle, has the Application for Title executed by the customer and delivers the vehicle, the dealer remains liable if that customer drives off the dealer's lot and has a catastrophic accident. Clearly, the legislature never intended this to be the case. During this interim period, up to fifteen days under Michigan law, a dealer would have liability for a vehicle over which it has no control and which it has already assigned its interest in by virtue of a signature on the Application for Title and/or Certificate of Title. The Michigan Owner Liability

Statute is found at MCL 257.240 et seq. The pertinent sections of the statute associated with the instant litigation provide for the liability of a vehicle owner under the following circumstances:

> **257.240 Liability for Use or Ownership of Vehicle After Transfer of Endorse Certificate of Title.**
>
> The owner of a motor vehicle has made a bona fide sale by transfer of his or her title or interest and who has delivered possession of the vehicle and the Certificate of Title thereto properly endorsed to the purchaser or transferee shall not be liable for any damages or a violation of law thereafter resulting from the use or ownership of the vehicle by another.
>
> **257.401 Civil Actions; Liability of Owner, Lessor Section 401.1**
>
> The owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of state or the ordinary care standard required by common law. The owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge.

Also instructive with respect to the issue of transfer of ownership of title is found at MCL 257.233:

> (8) The owner shall endorse on the back of the certificate of title an assignment of the title with warranty of title in the form printed on the certificate with a statement of all security interest in the vehicle or in accessories on the vehicle and deliver or cause the certificate to be mailed or delivered to the purchaser or transferee at the time of the delivery to the purchaser or transferee of the vehicle. The certificate shall show the payment or satisfaction of any security interest as shown on the original title.
>
> (9) Upon the delivery of a motor vehicle and the transfer of sale or assignment of the title or interest in a motor vehicle by a person, including a dealer, the effective date of the transfer of title or interest in the vehicle shall be the date of execution of either the Application for Title or the Certificate of Title. (emphasis added).

Clearly, based on the this statute, the seller of a motor vehicle is no longer considered an owner for liability purposes once the Certificate of Title or the Application for Title has been executed. Execution as used in the statute is not defined. Certainly, in the typical transaction, a

customer signs the Application for Title, takes delivery of the vehicle and drives the new vehicle off the dealer's lot. If this Court accepts the dicta set forth in the Goins' decision, it would open every auto dealer in the State of Michigan to liability for the use of that automobile until the Secretary of State received the Application for Title or the Certificate of Title. Certainly the word execution as used in the statute is clear. There is no reason for this Court to resort to principals of statutory construction to articulate the meaning of the word "execution". It is commonly used and known as the placement of a signature on a document. (See definition set forth in Appellant's Brief). This is precisely what took place on October 19, 2000 when the Defendant in the underlying action signed the Application for Title and took delivery of the vehicle. At that point, transfer of title was complete. Mailing or sending the Application for Title to the Secretary of State is not a requirement under the statute nor is it a practice that any auto dealer in the State of Michigan adheres to or considers to be an issue. Certainly there is no evidence that the legislature ever intended that the word "execution" would be construed to mean both signing and mailing a document.

The case of Goins v Greenfield Jeep Eagle, 449 Mich 1 (1995) presented facts before this Court which were completely different from those in the instant litigation. The Michigan Supreme Court in the first line of its opinion in Goins defined the scope of the Court's holding. The Court stated at page 1 as follows:

> "In this case, we are called on to determine whether an automobile dealership that fails to verify the existence of a purchaser's motor vehicle insurance remains liable, as an owner, for the negligent operation of that vehicle."

With this one simple sentence, the Supreme Court narrowed the scope of its holding and defined precisely the issue that it was deciding. The instant case has nothing to do with whether a motor vehicle dealer verified insurance prior to delivery of a motor vehicle. Indeed, this case

really turns on a simple interpretation of the word "execution" as used in the Michigan Statute which defines the transfer of ownership in a motor vehicle. After a dealer validly transfers title, the dealer is no longer considered an owner of the vehicle and is relieved of any liability associated with its use. MCL §257.240. In addition, the Michigan Supreme Court will recognize the existence of a transfer of title in cases in which substantial compliance with the Motor Vehicle Code's requirements was achieved. See Schomberg v Bayly, 259 Mich 135, 139; 242 NW 866 (1932). (Filing Certificate of Title after statutorily required time did not invalidate ownership transfer). Several other cases such as Zechlin v Bridges Motor Sales, 190 Mich App 339, 342; 475 NW2d 60 (1991) and Long v Thunderbay Manufacturing, 86 Mich App 69, 70; 272 NW2d 337 (1978) also held that minor or technical variances from the Motor Vehicle Code will not invalidate the transfer of title as long as there is substantial compliance with the Motor Vehicle Code's requirements. In this case, it is clear that Defendant, Golling "substantially complied" with the Motor Vehicle Code's requirements to transfer title to Ms. Nichols prior to the accident.

In the Goins case, there was no question with respect to the date of execution of the Application of Title. Indeed, the date of execution of the Application for Title in the instant litigation is also not in dispute. The only issue before the Court in Goins case was whether the dealer remained an owner due to its failure to verify proof of insurance prior to submitting the Application for Title to the Secretary of State. The Supreme Court in the Goins' decision was not required to determine that execution of the Application for Title requiring mailing of the document to the Secretary of State in order to determine whether the failure to verify insurance invalidated the transfer of ownership.

B. THE STATEMENT IN GOINS THAT "EXECUTION" OF THE APPLICATION FOR TITLE OCCURS WHEN THE DEFENDANT SENT THE NECESSARY FORMS TO THE SECRETARY OF STATE IS DICTA AND HAS NO APPLICATION TO THE NARROW HOLDING OF THE GOINS DECISION.

The Goins decision was certainly well reasoned with respect to the issue before the Court. However, at pages 13 and 14 of the decision, the Court strayed from the issue before it and offered gratuitous statements with respect to "execution" which have created confusion in both the trial courts and the Court of Appeals of Michigan. At page 13 of the decision the Court stated as follows:

> "Gazdecki, Basgall & Reddig all demonstrate how important the transfer of title is to the transfer of ownership. Title transfers when there has been an "execution of either the Application for Title or the Certificate of Title." MCL 257.233(5); MSA 9.1933(5). In the present case, both occurred. The Application for Title was executed when Defendant sent the necessary forms to the Secretary of State and the Certificate of Title was executed when the Secretary of State issued a new Certificate in the purchaser's name. Thus, if a failure to follow the Motor Vehicle Code in a situation like this would not prevent the transfer of ownership, then the failure to follow the instructional manual is not sufficient either. Title was transferred and Defendant no longer remained liable as the owner of the vehicle." (emphasis added)

What is puzzling about these statements is that there was absolutely no issue before the Court with respect to the transfer of title of this particular vehicle. From a factual standpoint, the Goins case merely dealt with the issue of whether the dealer had a duty to verify insurance on the vehicle prior to a transfer of title. The language contained in this paragraph is gratuitous and has no application to the holding in the Goins case. The Court's statement that the Application for Title was executed when Defendant sent the necessary forms to the Secretary of State had absolutely nothing to do with the Court's determination of the narrow issue of insurance that was before it. Even more puzzling is the Court's somewhat contradictory statement contained in its conclusion at page 14 of the Goins Opinion. The Court stated as follows:

"CONCLUSION"

> "The Court of Appeals erred when it found that Defendant was the owner of the vehicle at the time of the accident. The Motor Vehicle Code simply requires a dealer to fill out the proper application for a Certificate of Title and to submit it to the Secretary of State within fifteen days. In the present case, Defendant performed all these acts within the requisite amount of time and the Secretary of State issued a Certificate of Title, Registration and license plate to the purchaser. Although Defendant did not verify Parker's insurance coverage by acquiring and sending a copy of his insurance certificate, this act was simply not required under the Vehicle Code. While the manual requires a dealer to submit a copy of the purchaser's insurance to the Secretary of State, it was never properly promulgated and did not have the force of law. Thus, we conclude that there was no genuine issue with respect to the Defendant's liability. We reverse the Court of Appeals' decision and reinstate the trial court's grant of summary judgment for Defendant."

In the underlying litigation, there is no doubt that the Application for Title was signed on October 19, 2000 by the purchaser, Ms. Nichols. Attached as Exhibit A is the Application for Michigan Title which was signed by Ms. Nichols which bears out that it was duly recorded at the Secretary of State's office. In the upper right hand corner of the Application for Title there is a computerized date showing 10/30/2000 as well as a computer code tracking the transaction. In addition, sales tax is shown received by the Secretary of State in the amount of $769.23 and the statement "S.I. Recorded" as well as the new license plate number "THM 509", shown in this area. Therefore, it is undisputed that Golling Chrysler Plymouth Jeep timely filed the Application for Title eleven days after it was signed by Ms. Nichols. This is in keeping with the statutory requirement of submitting the Application for Title to the Secretary of State within fifteen days.

It is important to note that the Court stated in its conclusion "the Motor Vehicle Code simply requires a dealer to fill out the proper application for a certificate of title and to submit it to the Secretary of State within fifteen days." "In the present case, Defendant performed all these acts within the requisite amount of time and the Secretary of State issued a Certificate of

Title, registration and license plate to the purchaser." Remarkably, this is precisely what happened in this case! The dealer fully complied with Michigan law and the Court's statement in its conclusion conforms with Michigan law and is an accurate statement of Michigan law with respect to the duty of a dealer to submit a proper application for a Certificate of Title to the Secretary of State within given time frames (fifteen days). In a sense, the statement contained in the conclusion conflicts with the dicta associated with the prior paragraph which involves sending necessary forms to the Secretary of State in the context of "execution" of the Application for Title. The gratuitous statement by the Court at page 14 linking time of "execution" to submission of the forms to the Secretary of State is inexplicable. Simply put, these gratuitous statements have nothing to do with the holding in the case and are clearly dicta. Further, these statements seem to contradict the Court's statement contained in the conclusion which accurately reflects what happened from a practical standpoint and the legal requirements placed upon a dealer with respect to processing an Application for Title.

CONCLUSION

The Detroit Auto Dealer Association as amicus curiae in the instant litigation respectfully request that this Honorable Court grant the relief requested by Defendant Appellant, Golling Chrysler Plymouth Jeep and vacate the Court of Appeals opinion of October 11, 2005 and reinstate the trial court's order of February 9, 2004 granting Defendant's Motion for Summary Disposition.

Dated: January 3, 2006

Respectfully submitted,

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